

Message Text

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ACTION EUR-25

INFO OCT-01 ISO-00 EURE-00 SSO-00 NSCE-00 USIE-00 INRE-00

CIAE-00 DODE-00 PM-07 H-03 INR-10 L-03 NSAE-00 NSC-07

PA-04 RSC-01 PRS-01 SP-03 SS-20 CPR-02 ACDA-19 SAJ-01

IO-14 OMB-01 EB-11 TRSE-00 NIC-01 DRC-01 /135 W

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O R 041617Z APR 74

FM AMEMBASSY BONN

TO SECSTATE WASHDC IMMEDIATE 1574

INFO USMISSION BERLIN IMMEDIATE

USMISSION NATO BRUSSELS

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

C O N F I D E N T I A L BONN 5516

E.O. 11652: GDS

TAGS: PGOV, WB, GE, GW, US, FR, UK

SUBJECT: BK/O AND BK/L ON PRIVILEGES AND IMMUNITIES FOR
GDR PERM REPS IN WEST BERLIN

REF: (A) STATE 67456; (B) BONN 5271

SUMMARY: AT TRIPARTITE MEETING APRIL 4 FRENCH AND UK
REPS STATED THEY AND AUTHORITIES UNABLE ACCEPT U.S.
PROPOSAL FOR SHORT BK/L AUTHORIZING PROMULGATION BY
SENAT OF FRG ORDINANCE, AND REPEATED THAT LONDON AND
PARIS HAVE APPROVED BK/L AND BK/O AS TRANSMITTED REFTEL
B. IN ENSUING DISCUSSION ALL REPS AGAIN WENT OVER LOGIC
OF RESPECTIVE POSITIONS. END SUMMARY.

1. UK REP (CULLIMORE) AND LEGAL ADVISOR (BERMAN) REPEATED
RATIONALE FOR BK/L-BK/O PROCEDURE AS FOLLOWS. IN
REPLYING TO SOVIET PROTESTS ON BERLIN, IT IS OFTEN
NECESSARY FOR THE ALLIES TO RESPOND THAT THEY HAD ACTED
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IN ACCORDANCE WITH THE "ESTABLISHED PROCEDURES". IT IS

THEREFORE IMPORTANT TO MAINTAIN THE CREDIBILITY OF THIS LINE OF DEFENSE. THE QA SETS OUT SPECIFICALLY THAT INTERNATIONAL AGREEMENTS ENTERED INTO BY THE FRG MIGHT BE EXTENDED TO WEST BERLIN, PROVIDED THAT THE EXTENSION IS SPECIFIED IN EACH CASE, I.E., THAT THE AGREEMENT ITSELF CONTAINS A BERLIN CLAUSE. THIS HAS ALSO BEEN STANDING ALLIED PRACTICE SINCE WELL BEFORE THE QA. IT IS ALSO STANDARD PRACTICE NOT TO PERMIT THE NEED FOR A BERLIN CLAUSE TO BE EVADED BY TAKING OVER IN WSB LEGISLATION RELATING TO A TREATY WHICH HAD NOT ITSELF BEEN EXTENDED TO BERLIN. IN THE PRESENT CASE, IF THE ORDINANCE TAKEN OVER BY WSB WENT FURTHER THAN THE TEXT OF THE PROTOCOL BY CONFERRING ON PERSONNEL OF THE GDR PERMANENT MISSION IN BONN IMMUNITIES AND PRIVILEGES IN WEST BERLIN WHICH THE GDR HAD NOT ASKED FOR AND DID NOT WANT, THE RUSSIANS MIGHT WITH SOME JUSTICE CLAIM THAT THE PROCESS FOR TAKING OVER FRG DOMESTIC LAWS BY WSB WAS BEING EXPLOITED TO RECOUP POINTS WHICH THE FRV HAD FAILED TO PERSUADE THE GDR TO ACCEPT IN THEIR BILATERAL NEGOTIATIONS. IN MAKING SUCH A COMPLAINT THE SOVIET POSITION WOULD BE STRENGTHENED BY THE FACT THAT THEY HAD ALREADY QUESTIONED THE TAKING OVER IN BERLIN OF THE FEDERAL LAW UNDER WHICH THE ORDINANCE WOULD BE ISSUED. FROM THE PRACTICAL POINT OF VIEW, THE BEST SOLUTION SEEMED TO BE NOT TO CONFER PRIVILEGES AND IMMUNITIES IN WSB ON THE MEMBERS OF THE GDR PERMANENT MISSION IN BONN. IT WOULD BE MUCH EASIER TO REPLY CONVINCINGLY TO THE SOVIET PROTEST IF THE ORDINANCE WERE NOT TAKEN OVER IN BERLIN AT ALL. THE GDR COULD NOT COMPLAIN THAT THE MEMBERS OF THEIR PERMANENT MISSION IN BONN ENJOYED NO IMMUNITY IN WEST BERLIN, IF THEY HAD RESISTED THE INSERTION IN THE PROTOCOL OF A FULL BERLIN CLAUSE. HOWEVER, REFUSAL BY THE ALLIES TO PROVIDE IN SOME WAY FOR SUCH PRIVILEGES AND IMMUNITIES (P&I) IS NOT SEEN AS A VIABLE ALTERNATIVE, SO A "MIDDLE PATH" BETWEEN OUTRIGHT REFUSAL AND A SIMPLE BK/L AUTHORIZING PROMULGATION OF FRG ORDINANCES IS SEEN AS BEST POSSIBLE SOLUTION. THIS "MIDDLE PATH" PERMITS GOOD ALLIED RESPONSE TO ANY FURTHER SOVIET PROTEST, A DEFENSE STRENGTHENED BY FACT THAT ONLY PURPOSE OF ALLIED ACTION CLEARLY SHOWN AS FACILITATION

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OF GDR REPS' FULFILLING THEIR DUTIES. UK REP ALSO SAW SUBSTANTIAL VALUE IN INSISTING VIS-A-VIS FRG IN CORRECT PROCEDURE AS A PROTECTION OF ALLIED POSITION.

2. FRENCH REP (PAYE) SAID HIS AUTHORITIES IN COMPLETE AGREEMENT WITH UK RATIONALE. HE SAID THEY SAW SITUATION AS ONE IN WHICH THREE ALLIES UNILATERALLY ALLOWING SENAT TO PROVIDE P&I TO GDR REPS AND, IN THIS

CONNECTION, NOTED THAT LANGUAGE IN PARA 1 OF BK/O WHICH WOULD AUTHORIZE THE SENAT "TO APPLY THE PROVISIONS" OF THE FRG ORDINANCE WENT TOO FAR BUT THAT HE WOULD NOT MAKE ISSUE OF THIS AT THIS LATE DATE. PAYE ADDED THAT SIMPLE TAKING OVER OF FRG ORDINANCES WOULD "ADD SOMETHING" TO GAUS-NIER AGREEMENT WHICH ALLIES MUST NOT DO. SUCH ACTION WOULD GIVE IMPRESSION THAT ALLIES AVOIDING QA AND ALSO WOULD PUT US IN BAD POSITION VIS-A-VIS THE SOVIETS.

3. REGARDING EXTENSION OF RELEVANT SEGMENTS GAUS-NIER AGREEMENT, UK REP NOTED THIS PERFECTLY ACCEPTABLE, BUT THAT IT PROPERLY A MATTER FOR BERLIN MISSIONS TO DISCUSS AND REACH AGREEMENT ON SPECIFIC PROCEDURE ON. FRENCH REP SAID THAT HIS CURRENT VIEW IS THAT EXTENSION AT LEAST OF PROTOCOL NOTE NUMBER 6 IS NECESSARY IN ORDER TO ESTABLISH LEGAL BASIS FOR FRG REPRESENTATION INTERESTS WSB VIS-A-VIS GDR.

4. COMMENT AND REQUESTED ACTION: WE AGREE WITH THRUST OF UK/FRENCH ARGUMENT AND SEE NO COMPELLING REASONS WHY BK/O AND BK/L ON LINES THOSE TRANSMITTED REFTEL B SHOULD NOT BE ISSUED. AIM OF ALLIES IS TO PROVIDE, IF POSSIBLE, AGREED TEXT TO FRG PRIOR TO BUNDESRAT ACTION ON ORDINANCES, WHICH WILL PROBABLY OCCUR AFTERNOON OF APRIL 5. WE WOULD HOPE THAT DEPARTMENT CAN AGREE TO TEXTS REFTEL B. IF NECESSARY, WE THINK WE MAY BE ABLE TO OBTAIN FRENCH AND BRITISH AGREEMENT TO DEPARTMENT PROPOSALS FOR BK/L PER PARA 2B OF REFTEL A.
HILLENBRAND

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